

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 757 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JYOTIBEN D/O MADHUKANT MANILALOZA

Versus

JIGNESHBHAI JAISUKHBHAI OZA

Appearance:

MR NK MAJMUDAR for Petitioner

MR JD AJMERA for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/12/98

ORAL JUDGEMENT

1. Ms. Jyotiben D/o Madhukant Manilal - petitioner present in person. Mr. Jignesh J. Oza, respondent, present in person.

2. This revision application is directed by the opponent-petitioner against the order dated 24-2-1998 of the 2nd Extra Assistant Judge, Baroda below Ex.66 in Hindu Marriage Petition No.277/94. The petitioner-opponent filed an application Ex.66 in which

prayer has been made that the petition filed for dissolution of marriage by decree of divorce filed before one year as lapsed since the date of marriage be entertained.

3. Under the order impugned in this revision application, this application has been granted and the petitioner-opponent-wife felt aggrieved of the said order, filed this revision application before this court.

4. The facts of the case, in brief, are that the marriage of the petitioner and respondent was solemnised on 20th February, 1994 at Godhra. It is the case of the respondent that after marriage, the petitioner-wife was not discharging her matrimonial obligations. She has not cooperatinh with the respondent-husband and further more she used to create problems for him. She was not happy at the matrimonial home and used to stay away from the husband and the matrimonial home. She never wanted to live with the respondent-husband and she used to tell him that she wanted divorce. In this factual matrix, the respondent-husband filed the petition under section 9 of the Hindu Marriage Act, 1955 and prayed for the decree of restitution of conjugal rights. After receipt of summons of the petition, the petitioner-wife put appearance in the court. However, subsequently it appears that the respondent-husband prayed for the amendment of the application and incorporated therein the prayer for dissolution of marriage by decree of divorce. This prayer appears to be made after lapse of one year from the date of marriage. The application Ex.66 has been filed for grant of permission to maintain the same. It is not in dispute that the Hindu Marriage Petition No.277/94 was submitted in the court by the respondent-husband on 30th November, 1994. However, in view of the subsequent development which has been taken place it is not necessary for this court to go any deep in the matter and to decide on the validity, legality and correctness of the order impugned in this revision application. The parties have settled their dispute and they filed the consent term in which prayer has been made for dissolution of their marriage by decree of divorce by mutual consent. This consent term in which this prayer has been incorporated has been filed before this Court by the parties. The parties are present in the court and the Court has ascertained from them whether they have decided for dissolution of their marriage by decree of divorce by mutual consent. They have accepted the consent terms and prayer made therein for dissolution of their marriage by decree of divorce by mutual consent. They have also settled the amount of permanent alimony

i.e. of Rs.1,25,000/- and that amount has been paid by demand draft to the petitioner-wife. She has accepted the demand draft and she has forgone her all claims in respect of permanent alimony etc.. The parties have stated before this court that they have arrived at the settlement voluntarily and with full knowledge and without any coercion or duress. They have made further statement that this settlement and decision taken for dissolution of their marriage by decree of divorce by mutual consent is in their interest.

5. It is unfortunate that immediately after marriage the parties could not remain together. The marriage has been solemnized on 20th February, 1994 and they are living separately for last more than four years. Out of this wedlock there is not child. The petition for dissolution of marriage by decree of divorce is pending in the trial court since four years. The parties could have remained together at the matrimonial home for hardly few months.

6. Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955') provides that subject to the provisions of the Act, 1955 petition for dissolution of marriage by decree of divorce may be presented to the District Court by both the parties to the marriage together where such marriage was solemnized before or after commencement of the Marriage Laws (Amendment Act, 1976) on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that their marriage should be dissolved. On motion of both the parties made, not earlier than six months of the date of the presentation of the petition aforesaid and not later than 18 months after the said date if the petition is not withdrawn, in the meantime, the Court shall on being satisfied after hearing the parties and after making such inquiry as it thinks fit, the marriage has been solemnized and that the averments in the petition are true, pass decree of divorce declaring the marriage to be dissolved with effect from the date of decree.

7. As stated earlier, I am satisfied that the averments made in the petition are true. Solemnization of marriage has also been admitted between the parties.

8. It is no more res integra that the period for which the court has to wait before passing of the decree for dissolution of marriage by mutual consent is not imperative. In appropriate case, the court can dispense

with this requirement of waiting period before dissolving the marriage of the parties by decree of divorce by mutual consent. In the facts of this case, that is to say, for last more than four years, the parties are living separately, they have settled their disputes, the wife has also accepted the sum of Rs.1,25,000/- towards full and final settlement of her claim towards permanent alimony and the divorce petition is pending in the trial court since 1994, I consider it to be a fit and appropriate case where the requirement of waiting period for passing of the decree for dissolution of marriage of the petitioner and the respondent by decree of divorce by mutual consent to be dispensed with. The parties have also given out that it is not possible to live together in view of the serious difference of opinion and heart-burnings. Looking to this long period of separation, serious difference of opinion and heart-burnings it appears to be a case where there are little chances of reunion of this couple and to continue their marital life. This is another factor for which I consider it to be appropriate case where the requirement of waiting period has provided under section 13-B of the Act, 1955 before passing of the decree of dissolution of marriage by decree of divorce by mutual consent should be dispensed with.

9. Ordinarily such petition has to be filed before the court below and more so when the divorce petition is pending between the parties before the said court. In case where the matter is pending before this court arising out of the divorce petition, if the party desirous of settling their disputes and filed an application for dissolution of marriage by decree of divorce by mutual consent, the court should relegate them to the trial court. However, in some exceptional cases, the court may order for dissolution of marriage by decree of divorce by mutual consent on joint application filed by the parties to the litigation. The record of the trial court of the Hindu Marriage Petition has been called for and which is before this Court. Both the parties through their advocate prayed for passing of the decree by this court in this proceeding for dissolution of their marriage by decree of divorce by consent. The reasons have been given that the litigation now in the courts heavily costs to the parties and in case they are relegated to the trial court for this petition to be filed and that court has to pass the decree, there is all possibility that they have to incur further litigation expenses and secondly, the Court may not dispense with the requirement of waiting period to be followed before decree of divorce is granted as provided under subsection

(2) of section 13 of the Act, 1955. It has next been submitted by the parties through their counsel that it is only a formality in the form and not of the substance. When the matter is pending before this 'court and the file of divorce petition is also in this court, what for these parties should be] relegated to the District court and it may not be in the larger interest of parties themselves also. It is only a case where it may be a matter of form but in imparting justice, the approach of the courts should be to see that the parties are not unnecessary put to inconvenience or are being subjected to further more heavy expense of litigation as well as more time to be consumed by the court before the matter is finally decided. I find sufficient merits in the contention of the learned counsel for the parties and prayer made by the parties themselves. It appears to be a matter of form than substance. When the file is before this court of the trial court and when the provisions of subsection 2 of section 13-B of the Act, 1955 are not imperative, I fail to see what useful purpose would be served or there may be any technical legal requirement of sending the parties to the trial court for getting the marriage dissolved by decree of divorce by mutual consent. In appropriate case, this course could have been adopted. One of the reasons for adopting this course may be that some time the parties may have taken the decision abruptly and in hurry and the court may consider that some reasonable time may be given to them to reconsider their decision and to give rethought to the matter. For this purpose also, I fail to see why the parties should be relegated in each and every case to the trial court. This can also be possible here by passing of the order on the joint application filed by the parties under section 13-B of the Act, 1955. In this case, as stated earlier, the parties have finally decided their disputes and they have no plan whatsoever in their mind to give second thought or reconsider their decision. From the conduct of the parties which I have seen through these proceedings as well as after talking to them there appears to be no chance of their reunion, to live together as husband and wife and to continue their marital life. This inference is clearly supported from the fact that along with the terms of settlement, the husband has come up with the draft of the amount of permanent alimony and that has been accepted by the wife. This decision cannot be taken to be in hurry or abruptly. It appears to be taken after due deliberation and consideration of all aspects of the matter. This court cannot be oblivious of the fact that the parties are living separately for last more than four years and this revision application itself is pending before this court

for last more than 5 to 6 months. So in these facts and circumstances, I am of the considered opinion that it is not the case where the parties should be relegated to the trial court for getting their marriage dissolved by decree of divorce by mutual consent. All necessary ingredients to be fulfilled by the parties before their marriage is to be dissolved by decree of divorce by mutual consent, have been fulfilled in the present case. They have presented the petition jointly to this court. The parties are living separately for a period of more than a year before the presentation of the petition in this court. From the application as well as after talking to them it is clear that they have not been able to live together. They have mutually agreed that their marriage should be dissolved by decree of divorce by mutual consent. So taking into consideration the totality of the facts of this case, I am satisfied that this petition under section 13-B of the Act, 1955 deserves to be granted and accordingly it is granted.

10. In the result, the petition under section 13-B of the Act, 1955 jointly presented by the petitioner and respondent, husband and wife is allowed and their marriage solemnized on 20-2-1994 at Godhra according to Hindu rituals is hereby dissolved by decree of divorce by mutual consent. Registry is directed to draw the decree in this case forthwith.

11. In view of the fact that the marriage of the petitioner and the respondent has been dissolved by decree of divorce by mutual consent, the Hindu Marriage Petition No.277/94 now no more survives and in fact and substance it has become infructuous. Accordingly, the said petition is ordered to be dismissed as having become infructuous. As a result of the dismissal of H.M.P. No.277/94 as having become infructuous, this revision application has also become infructuous and the same is accordingly dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated.

zgs/-